

23/667

LAW OFFICES  
FRITZ R. KAHN, P.C.  
1920 N STREET, NW (8TH FL)  
WASHINGTON, DC 20036  
Tel. (202) 263-4152 Fax (202) 331-8330  
e-mail: xccgc@verizon.net

January 12, 2012

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, D. C. 20423

ENTERED  
Office of Proceedings  
JAN 12 2012  
Part of  
Public Record

Dear Ms. Brown:

This refers to Docket No. AB 1095X, SMS Rail Service, Inc. -- Adverse Discontinuance of Service Exemption -- Gloucester County, NJ, and to the Petition of Paulsboro Refining Company LLC for Adverse Discontinuance of Service Exemption, filed January 9, 2012.

To bring the seemingly daily exchange of letters between SMS Rail Service, Inc. and Paulsboro Refining Company LLC finally to a halt, SMS Rail Service, Inc. respectfully invites the Board's attention to the fact that it will not process a third-party or adverse discontinuance of service by petition for exemption, such as Paulsboro Refining Company LLC has filed.

The Board in STB Docket No. AB-12 (Sub-No. 190X), Southern Pacific Rail Corporation--Abandonment Exemption--In Garfield, Eagle and Pitkin Counties, CO, served June 10, 1996, declared that a "person other than a railroad seeking a determination by the Board that the public convenience and necessity requires or permits the abandonment or discontinuance of a line of railroad must file a formal application..."

See, also, Finance Docket No. 32518, The Phillips Company--Petition for Declaratory Order, fn. 2, served February 15, 1997; Fritz R. Kahn, "Discontinue Adverse Abandonments", vol. 78 Journal of Transportation Law, Logistics and Policy, no. 1, First Qtr. 2011; Comments of Transportation Arbitration and Mediation, P.L.L.C. in Docket No. EP 712, Improving Regulation and Regulatory Review, filed January 10, 2012.

Paulsboro Refining Company LLC has not cited -- and indeed cannot cite -- a single Board proceeding in which a third-party or adverse discontinuance of service has


Ms. Cynthia T. Brown  
January 12, 2012  
Page Two

been processed by petition for exemption rather than by formal application as it is endeavoring to do in the instant case.

I certify that I have served this letter on Paulsboro Refining Company LLC by e-mailing a copy to its counsel, Eric M. Hocky, Esq. at ehocky@thorpreed.com.

If you have any questions concerning the foregoing or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn